

Mediating *Dalit* Human Rights in Nepal: A Principled Stance for Media

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Abstract

Nepali Dalits have a population of 3.6 million as of March 2015. Their nominal presence, in decision-making processes over decades, reflects their extreme marginalization and exclusion. A mere superficial reporting of a few visible incidents does not create required pressures for stakeholders. There exists an utter lack of human rights perspectives in media coverage of Dalit human rights in Nepal. This article aims to discuss that a principled stance for Nepali media to mediate Dalit human rights is to base their coverage on the global human rights treaties, the domestic constitutional provisions and the social responsible theory of media. Dalits' civil and political rights, and economic, social and cultural rights deserve an equitable space and attention of media for a just society.

Keywords: Nepal, *Dalits*, marginalized, human rights, media, freedom, equality, brotherhood

Human Rights Concept: A Brief Sketch

Various factors have apparently contributed to the evolution of the modern concept of human rights. Some of them include: religious precepts, philosophical writings and discourses, customary social practices, war treaties of various times, classical historical documents, contribution of the League of Nations, and more.

However, the modern concept of human rights emerged with their linkage with political and independence struggles. Some major contributions with universalistic approaches, for instance, came from the British *Magna Carta* (1215), the *American Declaration of Independence* (1776), the *French Revolution* (1789) and the *Russian Bolshevik Revolution* (1917).

The *Magna Carta*,¹ declared 800 years ago in England, informs us that King John (1199-1216) was compelled to sign in the paper for people's liberties in the feudal era (Gosine, 2011). Similarly, the *American Declaration of Independence* (1776)² states that all human beings are born equal and deserve their natural rights without discriminations. Moreover, *The Declaration of the*

Rights of Man and of the Citizen (1789),³ produced as the outcome of the French Revolution in 1789, molded global principles of 'equality', 'freedom' and 'brotherhood', also reflected in the *UN Charter* (1945)⁴ and in the *Universal Declaration of Human Rights* (1948) and other subsequent human rights treaties and other related documents. To add to it, the Bolshevik Revolution laid emphasis on the equal recognition of economic and social rights compared to civil and political rights (Yasin and Upadhyay, 2004). These declarations of rights set important precedents towards modernizing the concept of human rights.

Human rights seem to have become a global concern especially after the *World War II* (1939 – 1945). Lyons and Mayall (2003) believe that the Nazis' arrogant claim of being a superior race and the deep fears that they engendered throughout the countries occupied by them created widespread support for raising human rights to a new level of international concern.

Later, the establishment of the UN and its mechanisms has officially universalized human rights across the globe. The UN Charter, in its Preamble, expresses all the member nations' commitment towards global peace and security, fundamental human rights, dignity

¹ Retrieved from <http://www2.hn.psu.edu/faculty/jmanis/poldocs/magnacar.pdf>

² www.constitution.org/us/doi

³ Retrieved from http://www.americanbar.org/content/dam/aba/migrated/2011_build/human_rights/french_dec_rights_of_man.authcheckdam.pdf

⁴ For the full text of the charter, see: <http://www.un.org/en/documents/charter/index.shtml>

and worth of the human person, the equal rights of men and women, and economic and social advancement of all peoples.

On 10 December 1948, the then 58 member-states of the United Nations, through the General Assembly, adopted the *Universal Declaration of Human Rights (UDHR)*⁵ with the foundational principle in its Article 1 that states, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." This Article has clearly adopted the pivotal principles of *freedom, equality and brotherhood* stated in the *Declaration of the Rights of Man and of the Citizen* declared after the French Revolution in 1789. The UDHR Preamble states that recognition of the inherent dignity and equal and inalienable rights of all individuals is the foundation of freedom, justice and peace in the world. It attaches equal importance to civil, political, economic, social and cultural rights and all human beings' entitlement to them without discrimination on any ground.

All human rights stated in the Declaration are naturally relevant for media. However, Article 19 has special importance for media institutions and journalists. It states, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Journalists all over the world often quote this Article whenever they advocate media freedom. So do Nepali journalists.

Assessing the possible impact of this important Universal Declaration on the scope of actions among nations, Donnelly states:

The Universal Declaration model envisions individuals deeply enmeshed in "natural" and voluntary groups ranging from families through the state. Internationally recognized human rights impose obligations on the state, regulate relations between citizens and states, and require the state and society for their realization (Mayall, 2003:21).

Donnelly classifies mainly the four elements of the Universal Declaration model, worth emphasizing in his view (ibid, p. 20). These include: focus on rights; the restriction to individual rights; the balance between civil and political rights and economic, social and cultural rights; and national responsibility for implementing internationally recognized human rights.

Thus, relying on the rich philosophical insight of the Universal Declaration of Human Rights and the international consensus on it, the UN General Assembly adopted two major human rights treaties, viz., and *International Covenant on Economic, Social and Cultural Rights*⁶ and *International Covenant on Civil and Political Rights*⁷ in 1966. These treaties are binding to all nations on Earth. Together with the Universal Declaration of Human Rights, these treaties are recognized as International Bill of Rights. Numerous ingredients for media coverage on Dalit human rights exist in those treaties.

Likewise, *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*⁸ adopted by the UN General Assembly on 21 December 1965 has had its basis in the UDHR, the ICESCR and ICCPR. According to CERD, the State has the obligation not to discriminate its peoples of various races, ethnic backgrounds or descents, and punish those who discriminate on any ground. Required to take proactive measures for the elimination of racial discrimination of all forms, the state has to guarantee equal civil and political, economic, social and cultural rights to the peoples of all origins.

Dalit Human Rights in Nepal

What is Caste? Who are Dalits?

According to Louis Dumont (1970), the word 'caste' has the Portuguese and Spanish origin: *casta*, a word the Spaniards used in the sense of race, and which the Portuguese are said to have used in the Indian context in the middle 15th century. The word 'Dalit' is a political term that has been used to refer to the peoples who have been discriminated against and suppressed in various spheres of their lives on the basis of their so-called lowest position in the caste hierarchy. The literal meaning of the word generally found in contemporary English dictionaries is 'downtrodden'.

"The *Brāhmaṇ* was his (*Puruṣa*'s) mouth; the *Rājanya* was made his arms; the being (called) the *Vaiśyas*, he was his thighs; the *Śūdra* sprang from his feet." Dutt (1986) refers to this *Rgvedic* hymn as the *Magna Carta* of the caste system.

⁶ For the full text, see: <http://www2.ohchr.org/english/law/escr.htm>

⁷ For the full text, see: <http://www2.ohchr.org/english/law/cpr.htm>

⁸ See the full text at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

⁵ For the full text, see: <http://www.un.org/rights/HRToday/declar.htm>

Upadhyay (2005) refers to caste strata as the origin of the Hindu *varṇāśrama* system rooted in the *R̥gveda*. The Sanskrit word "*varṇāśrama*" literally means color or light as per the *R̥gveda*. Upadhyay states, "However, the *varṇa* and caste have also been considered synonyms. In the *Taitīrīya Brāhmaṇa*, the Brahmins and the *Śūdras* have been described as *Daivī varṇa* and *āsurya varṇa* respectively. The formal literally means the divine color while the latter means the demonic color. "But the *Gītā* (another sacred Hindu treatise)," Upadhyay further states, "considers actions as the major criteria for the determination of the Varna. It mentions that those who do good get born as the noble Varna while those who do ill-deed get born as the ignoble Varna." Many laypersons, perhaps misunderstanding this saying, happen to be rigid believers that caste is the product of yesterday's *karma* (deed) and so one has to accept it the way it is.

It has apparently been a hereditary social system that has been transformed little in substance, while crystallizing *Dalit* human rights. Referring to the four *varṇa*-based deep-rooted caste hierarchy, India's constitutional architect and *Dalit* leader B. R. Ambedkar states, "That the principle of graded inequality is a fundamental principle is beyond controversy. The four classes are not on horizontal plane, different but equal. They are on vertical plane. Not only different but unequal in status, one standing above the other."

Linking *Dalits*' suffering to this deep-rooted tradition, *Nepal National Dalit Welfare Organization* (NNDSWO)⁹ writes, "*Dalits* in Nepal are a historically state-victimized disadvantaged community who have been compelled to lag at the bottom of the social structure and excluded from national development mainstream due to the caste system and extreme Hinduism for centuries."

Nepal Government's 2011 Census shows a total population of 26,494,504 out of which *Dalit* population is more than 3.4 million (about 13%). National *Dalit* Commission¹⁰ has enlisted 26 castes under the *Dalit* community, categorizing them into the Hill *Dalits* and the Terai *Dalits*.

Dalits and State in Nepal

Amidst all-pervasive caste-based discriminations in direct and subtle forms, defining caste-based discrimination may be a challenging job. However,

International Labor Office, Kathmandu (2005) describes caste-based discrimination as "the use of power by a superordinate group to impose customary or legal restrictions and deprivations upon a subordinate group in order to maintain a situation of privilege and inequality." Referring to discrimination as the result of a prejudiced state of mind, possible in various spheres of human activity, its Series 5 of the report adds, "It may involve enforced residential segregation, differential access to educational or employment opportunities, discrimination at the workplace, and imposition of other customary and legal disabilities."

This *varṇāśrama*¹¹ system was believed to have been initiated in Nepal following the entry of the Aryans from the South (Upadhyay, 2005). The first Aryans to enter Nepal were the *Licchavis* as early as c.a. 4th century AD. The *Nāgas*, *Gopālas* (the cow-herds), *Mahiṣapālas* (the buffalo-herds), *Kirāts* — the ones before the *Licchavis* before c.a. 1st century AD — were non-Aryans, Upadhyay adds. With a Hindu-Aryan mentality, the *Licchavis* naturally, as per their belief, emphasized on following the Aryan *varṇāśrama* norms and values to maintain society. *Licchavi* King *Amśuvarmā* (605 – 621 AD) had announced that his palace would directly look into the cases of Varna system violations. The *Licchavi* King *Siva Dev II* (694 – 705 AD) even set up a separate office called *Bhaṭṭādhikaran* to oversee people's conduct in relation to the Hindu religion and the *varṇa* system.

King *Jayasthiti Malla* (1382 – 1395 AD) of medieval Nepal reinforced the loosening caste system by classifying the people as per the Hindu *varṇa* system under which he clearly imposed many restrictions against the *Dalits*, who required to serve all the other castes, without ever seeking equality and dignity — a notion tantamount to a crime in that era. (Budhathoki, 1982). They were not allowed to wear clothes of their choices. Nor were they allowed to have house roofs similar to the ones of so-called higher-caste people.

In other parts of Nepal too, kings made sure caste system was followed, expanded and strengthened. For instance, King *Prithvī Malla of Karṇālī* (1138 – 1360 AD) did this in the Western Nepal (Chandara, 2004). Similarly, *Karṇāt* State within *Mithilā* Region (1097 – 1325 AD) imposed a caste registration system, expanding it towards eastern Nepal. Between 1609 and

⁹ Retrieved from <http://www.nndsw.org.np/index.php?page=workingareas>

¹⁰ Retrieved from <http://ndc.gov.np/site/cms/4>

¹¹ A hierarchical system with tiers, one above the other, and is traced back to the *R̥gveda*.

1636 AD, King *Rām Shāh* of *Gorkhā* strongly applied the caste system (ibid).

The first *Rāṇā* Prime Minister *Jung Bahādur* made a law in which he made caste-based discriminations compulsory, with punishment measures against those who did not follow these discriminations (Hofer, 2004; Chandara, 2004). All historical texts of Nepal prove that the 104-year *Rāṇā* regime was strict and totalitarian in all respects. Although some priestly advisers, their relatives and those who worked in the *Rāṇā* palaces enjoyed certain privileges, including the privilege to have ownership of much land, most of the ordinary people were not given most of their fundamental rights. As even the majority of non-*Dalits* were suppressed heavily, there was no question of *Dalits* having rights in that era of hereditary *Rāṇā* rule.

After the fall of the *Rāṇā* regime in 1951, the official policy of caste discrimination was not abolished immediately. The 104-year *Rāṇā* rule had left deeper impressions in the Nepali psychology from which the new democratic forces such as the Nepali Congress and the Communist Party of Nepal, which struggled against the hereditary rule, were not free considerably. On the one hand, the fall of the *Rāṇā* regime due to people's armed struggles meant that the power went back to the Shah dynasty, and on the other, the new forces seeking changes themselves were not mature enough to analyze such issues as they began to encounter each other as the chief antagonists. However delayed it was, King Mahendra replaced the 1854 *Muluki Ain* in 1963 (Kansakar and Ghimire, 2008). For the first time in Nepal, the State admitted to the truth that caste-based discrimination was not legally valid, and that it was necessary to invalidate the caste-based discriminations legally imposed by the *Rāṇās*. Despite this ban on caste-based discriminations, there were no other legal provisions to eliminate these age-old practices. In a sense, it was a preliminary acknowledgement by the state that it was de jure wrong to discriminate people on the ground of caste, though *Dalits* were de facto discriminated as before.

Political and Socio-Economic Conditions of *Dalits* in Nepal

Despite *Dalits*' struggle to improve their situation, it is not easy as they have a lack of representation in and access to politics, civil service and professions (UNDP, 2008)¹². They are rather discouraged than motivated;

as a result, their struggles for better often prove ineffective. This calculation by the UNDP indicates how seriously the *Dalits* of Nepal suffer from non-representation in politics and other vital sectors.

By all kinds of available poverty-defining parameters, *Dalits* have been found the poorest community in Nepal and more than 40% *Dalits* across the country are landless.¹³ In Nepali understanding, *Dalits* are traditionally so-called lower caste people treated as "untouchable" facing political, economic and social discriminations due to which 90% percent of them are below the poverty line, and most of them are landless.¹⁴

As Nepal's *Dalits* are the most marginalized community, Nepal's national development continuously gets affected due to the marginalization of more than 3.4 million *Dalits*. The country's National Planning Commission, poverty alleviation programs and even international agencies such as the World Bank and the UNDP have not studied the overall impact of *Dalits*' extreme marginalization on Nepal's overall productivity.

Commenting on the Nepali *Dalits*' human rights conditions in Nepal, the Human Rights Watch World Report 2011 states, "*Dalits* ('untouchables') suffer from discrimination in economic, social, and cultural spheres". The report notes that Nepal has yet to implement the UN agreed-upon guidelines on the elimination of caste discrimination.

The *UNDP Human Development Index 2014* ranks Nepali *Dalits* at 0.434, which implies that they belong to the absolute poverty line or the lowest socio-economic strata in Nepal. The *Dalit* community's per capita income is NRs. 33,786 per annum, the report states.

The report adds, "Low levels of education as well as social and economic exclusion translate into limited opportunities in economic and political spheres." Socially inclusive policies in education and health, and social protection for vulnerable groups have been recommended in the UNDP report, which stresses on the need for Nepal to accelerate its economic growth. Whatever the UNDP, a life-long development partner of Nepal, says, the formulation and implementation of inclusive pro-social justice policies are not very likely unless the political leaderships and official policymakers are able to internalize the human rights

¹² Retrieved from <http://www.ccd.org.np/publications/dalit%20of%20nepal%20and%20a%20new%20constitution.pdf>

¹³ As of footnote #9.

¹⁴ Helvetas Nepal Learning and Sharing Series No. 1

of the *Dalit* community, especially the sense of human dignity.

Literacy rate is also an indicator of the *Dalit* community. It ranges from 7.28 % (of *Musāhar*) to 46.86 % (*Gāine*).

A Nepali Civil Society parallel report on *Economic, Social and Cultural Rights (ESCR)*, with a review from April 2007 to July 2013,¹⁵ has recommended that the proportional representation of the marginalized and excluded peoples be included in the new constitution. The report also recommends that new legal and policy frameworks be designed to mainstream the marginalized and the excluded, including the *Dalit* community. This proves that the socio-economic and cultural rights of the *Dalit* community are still underheeded by the State.

Principled Stance for Media on *Dalit* Human Rights

Nepal, with a total area of 147,881 Sq. Km and a total population of 28,120,740 as of 3 March 2015, is very rich in the number of media. According to *Nepal Press Council's Annual Report 2014*, the total number of print media is 3,712, with the number of licensed FM stations being 543 of which 360 are operational. Similarly, number of licensed television stations is 75 while 116 online news portals have been recorded in the Press Council. This shows a quantitative swelling of media in Nepal. However, the direct observation of the existing public consciousness and the quality of information being produced and disseminated implies an immense need for the information and communication institutions and professionals to be up to the scratch. A positive possibility uniting the nation through diversity arises with the growing number of media should there be a wise and appropriate media policy in the country.

Indeed, mediating *Dalits'* suffering entails bridging pro-social justice exercises going on in various sectors and at different levels with state policymakers and enforcers. Media's exercises cover both self-sensitization and sensitization of others, with the spirit of human rights being central in their coverage. A deeper understanding of the deep-rooted character of one's own society gives them ground and strength to cover *Dalits'* human rights more justly.

The *Vienna Declaration of Human Rights*¹⁶ further clarifies that civil and political rights and economic, social and cultural rights are independent and interrelated, and media should treat them accordingly, linking them to Nepali *Dalits'* human rights.

The *Universal Declaration of Human Rights (UDHR)*, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *International Covenant on Civil and Political Rights (ICCPR)* — all three combined, commonly known as the *International Bill of Human Rights* — provide strong foundations for media to rely on as far as their thematic areas of human rights coverage are concerned. The *Comprehensive Peace Agreement (CPA)* signed on 21 November 2006 between the State and the then Communist Party of Nepal (Maoist) is an internationally recognized historical document that most relevantly states the agenda of political and socio-economic transformation and state restructuring to transform the conflicts in the Nepali society. These agenda clearly mean patchwork will not improve Nepal at all because there are deep-rooted multi-faceted discriminations and institutionalized structural inequalities in the vertically hierarchized society. In the light of these realities, *Dalit* rights are part of media coverage from human rights perspectives. Media themselves need to be courageous enough to transform their traditionally molded mindset while they try to substantiate their journalism to a higher level.

While the Nepali *Dalits*, too, aspire to be well-dignified democratic citizens in the 21st century, the Nepali media should seriously address the issue of state restructuring, as envisioned in the CPA, a potential tool also for transforming *Dalit* human rights conditions.

Similarly, the *Interim Constitution* Article 12 (1) under the Fundamental Rights Part in Nepal's Interim Constitution 2007 clearly states every person's right to live with human dignity. Similarly, Article 12 (1) includes the right to equality: All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. Under Article 12 (2), the constitution guarantees that there will be no discrimination against any citizen on grounds of religion, color, sex, caste, tribe, origin, language or ideological conviction or any of these. Moreover Article 12 (3) further clarifies that the State shall not discriminate against citizens on grounds of religion,

¹⁵ Retrieved from http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/NPL/INT_CESCR_NGO_NPL_15369E.pdf

¹⁶ Retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

race, caste, tribe, sex, origin, language or ideological conviction or any of these.

Regarding the practices of caste untouchability, the Interim Constitution has had a special provision in its Article 14, which describes the Right against untouchability and racial discrimination. It elaborates in 14 (1) that no person shall be discriminated against as untouchable and subjected to racial discrimination in any form, on grounds of caste, race, community or occupation. Such discriminatory treatment shall be punishable, and the victim shall be entitled to such compensation as determined by law.

In the *Interim Constitution*, Article 21, viz., the Right to Social Justice, is an attractive provision for the *Dalit* community. It assures the *Dalits* and other deprived communities about their inclusion and mainstreaming from the perspectives of social justice.

Sub-section (a) of Article 12 (3) contains freedom of opinion and expression while Article 27 has the provision of right to information, which states that every citizen shall have the right to demand or receive information on any matter of his or her interest or of public interest. Although these communication and information-related constitutional provisions are for every citizen, a weaker utilization of them has been commonly noticed. Media are, by principle, expected to utilize these media freedom provisions on behalf of the majority of people, with special care for the vulnerable masses such as the *Dalit* community. In fact, the meaning of constitutional rights that media use are never confined to their entrepreneurial or professional interests. The primary vision of these media freedoms are to empower people.

Furthermore, Nepal's *Code of Journalistic Ethics 2003* (amended in 2008),¹⁷ advanced and tempting from professional and theoretical perspectives, provides the highest priority to press freedom, human rights and editorial freedom. The rationale of protection and promotion of press freedom, as mentioned in the *Code of Journalistic Ethics* is linked to human rights and democracy. The fundamental values stipulated in the Journalistic Code of Ethics indicate a noble sense of journalistic practices, not limited to practicing journalism as a profession at home but to serve the purpose of universal democracy and human rights so as to contribute to global justice, peace, freedom and equality. The term 'humanitarianism' used in this *Code*

of *Ethics* implies that Nepali journalists can even communicate on international human rights issues without confining themselves to Nepal framework. Furthermore, the point of editorial freedom and accountability in the Journalistic Code of Conduct further empowers Nepali journalists morally and mentally. Despite some constraints before Nepali journalists, the ethical guidelines intended for them can be utilized considerably for proactive information dissemination on *Dalit* issues.

Linking the core spirit of the human rights treaties to the vision of overall empowerment and wellbeing of human beings, Cherribi (2011:48) points out the media values in this context:

Human rights as a rule that has to be respected creates spaces that are universally recognized, and in that sense we can say that human rights can be a strategy of the universalization of values, virtues, attitudes, and social standards. The media are both the guardian of these virtues and values and too often the victim of states that violate them.

In the Nepali society where discriminations are structurally strengthened and socially institutionalized, media coverage of *Dalit* human rights violations, though tough, has to be in tandem with the global human rights treaties and the constitution at home.

Because media are a social entity legally assigned to work for society, no one can ever deny the media theory of *Social Responsibility*, which guides them in their work. The report "*A Free and Responsible Press*" (also referred to as *Hutchins Commission Report*) produced by *The Commission on Freedom of the Press* in 1947 has become a foundational principle for continuing media's social responsibility debate. Today, debates on media development have reached a newer height, definitely marked by conflicts between public and corporate interests. The need to create a de-monopolized environment for a responsible and independent, ethically motivated and self-regulating press has been reflected in the Commission's report. Two special features mentioned in the report, which appear relevant for Nepali media institutions, are:

- (i) media institutions can be commercial but journalism must not be commercialized and
- (ii) media institutions should also try to discipline one another through public criticism.

The Nepali media sector, if imbued with a genuine sense of social responsibility theory, could determine a specialized area for comprehensive information

¹⁷ Retrieved from <http://www.presscouncilnepal.org/codeofconduct.php>

dissemination on *Dalit* issues, using a human rights perspective.

To Sum Up

Nepal, a nation pursuing the path of democracy, has been a party to the *International Bill of Human Rights*—the binding commitments. While the *Nepalis* are in the process of designing a new state structure, they have also expected to see the beginning of political, socio-economic and cultural transformation of their society. For this, especially the *Nepali Dalits*, extremely marginalized and excluded from the mainstream power channels, expect to establish their human dignity through a rapid process of visible improvement in their civil and political and economic, social and cultural rights. They might not have mastered elevated and democratic language to impactfully interpret the degree and intensity of their suffering and pain. But it is true that their suffering and pain have been voiced by many others at different times at various levels with some impact. Media are surely one of those stakeholders voicing *Dalit* suffering. What is equally true is the fact that the miserable political, social and economic conditions of the *Dalit* community have been officially, nationally and internationally documented. The *Nepali* media can and should do better as far as *Dalit* human rights are concerned. There are rich precepts to theoretically and practically guide them in covering *Dalit* human rights. Some of the major guiding principles in this context, apart from well-developed media theories, are abundantly contained in the *Universal Declaration of Human Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *International Covenant on Civil and Political Rights*, the *International Convention on the Elimination of All Forms of Racial Discrimination*, and other treaties.

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